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Federal Communications Commission

DA 98-995

DISPATCHED

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Pauls Valley and Healdton, Oklahoma)

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MM Docket No. 98-75  
RM-9264

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: May 20, 1998**

**Released: June 12, 1998**

Comment Date: August 3, 1998

Reply Comment Date: August 18, 1998

By the Chief, Allocation's Branch:

1. The Commission has before it the petition for rule making filed by Wright & Wright, Inc. ("petitioner"), requesting the reallocation of Channel 249C3 from Pauls Valley, Oklahoma, to Healdton, Oklahoma, as the community's first or second local aural service, and the modification of Station KGOK's license to specify Healdton as its community of license.<sup>1 2</sup>

<sup>1</sup> Petitioner's request to reallocate Channel 249C3 from Pauls Valley to Healdton was initially returned as technically unacceptable for consideration because of a short-spacing to the licensed transmitter site of Station KLAQ, Channel 248C2, Durant, Oklahoma. See Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996). On reconsideration, petitioner appends a sworn statement from its counsel stating he has spoken to Bill Harrison, the owner of Station KLAQ who related that Station KLAQ's licensed site was destroyed in a storm and, since late summer 1997, has been operating at the site specified in its construction permit, but was unsure that an FCC Form 302-FM for a license to cover its construction permit had been filed with the Commission. Further, upon conversations with the counsel for Station KLAQ, he has been authorized to state that Station KLAQ has no intention of returning to its previously licensed site and that a Form 302-FM application will be filed with the Commission in due course. In a supplement to its petition for reconsideration, petitioner states that KLAQ has filed a Form 302-FM on May 8, 1998. Based upon this information, we believe it proper to issue this Notice of Proposed Rule Making. While this represents a departure from the policy set forth in Cut and Shoot, Texas, *supra*, of not accepting contingent rule making petitions, we believe it is appropriate to waive this policy in this limited circumstance where the licensee of Station KLAQ has stated that its licensed transmitter site was destroyed in a storm, it has no intention of resuming operation from the transmitter site specified in its license, and it has now filed an application for a license to cover the outstanding construction permit. Therefore, the basis for the petition for reconsideration of our earlier dismissal of petitioner's request has been rendered moot by the issuance of this Notice of Proposed Rule Making, and the reconsideration request will be dismissed at the conclusion of this proceeding. Final action on this proceeding, however, may be withheld pending final licensing of Station KLAQ at the transmitter site specified in its construction permit.

Petitioner states that it will apply for the channel, if allotted.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870, 4874 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Healdton is listed in the 1990 U.S. Census and attributed with a population of 2,872 persons. Further, petitioner states that Healdton is located outside of any urbanized area. It further states that the reallocation will result in a preferential arrangement of allotments since it will provide the community with its first local aural service, assuming the relicensing of Station KICM from Healdton to Krum, Texas (MM Docket No. 98-50). Pauls Valley, on the other hand, with a 1990 Census population of 6,150 people, would retain local aural service from daytime-only AM Station KVLH.<sup>3</sup>

3. We believe petitioner's proposal warrants consideration. If Channel 229C3 is reallocated from Healdton to Krum, as proposed in MM Docket No. 98-50, the allotment of Channel 249C3 could provide Healdton with its first local aural service. However, should that action not occur, the allotment would represent a second local aural service to Healdton. We have determined that the 70 dBu contour of Channel 249C3 at either Healdton or Pauls Valley will not provide service to any part of an urbanized area. Further, an initial engineering review shows that the reallocation of Channel 249C3 would provide service to 43,317 people within a 3,648 square kilometer area while the station presently provides service to 51,972 people within an area of the same size. Although it appears that the station would serve fewer people if reallocated to Healdton, both the loss and gain areas are completely covered by at least five fulltime services and are thus considered to be well served. However, petitioner is requested to provide further information as to why the reallocation of Pauls Valley's sole full-time local aural service to the smaller community would result in a preferential arrangement of allotments if Channel 229C2 is not reallocated from Healdton to Krum, Texas.

4. Channel 249C3 can be allotted to Healdton in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles)

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<sup>2</sup> At the request of Lake Country Communications, Inc., the Commission has pending before it a proposal to substitute Channel 229C3 for Channel 229C2 at Healdton, reallocate Channel 229C3 to Krum, Texas, and modify Station KICM's license to specify Krum as its community of license. See Notice of Proposed Rule Making, MM Docket 98-50, 13 FCC Rcd (1988) (DA 98-659, released April 10, 1998). Should Channel 229C3 ultimately be reallocated to Krum, this proposal to reallocate Channel 249C3 from Pauls Valley to Healdton would represent the provision of a first local service at Healdton.

<sup>3</sup> Petitioner also points out that the Commission presently has pending before it a Notice of Proposed Rule Making proposing the allotment of FM Channel 283A or Channel 291A to Pauls Valley, thus providing an FM service to the community if allotted. See MM Docket 97-84, 12 FCC Rcd 3500 (1997). However, the proponents of the Pauls Valley allotment have withdrawn their interests in the allotment.

north, to accommodate petitioner's desired transmitter site.<sup>4</sup>

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Healdton, Oklahoma	229C2	229C2, <sup>5</sup> 249C3
Pauls Valley, Oklahoma	249C3	--

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before August 3, 1998, and reply comments on or before August 18, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert Lewis Thompson  
Taylor Thiemann & Aitkin, L.C.  
908 King Street, Suite 300  
Alexandria, VA 22314  
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been

<sup>4</sup> The coordinates for Channel 249C3 at Healdton are 34-17-28 North Latitude: 97-29-23 West Longitude.

<sup>5</sup> Channel 229C2 is proposed to be deleted from Healdton. See fn. 2, supra.

decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.